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3 **MINUTES (draft)**  
4 **Forensic Science Board Meeting**  
5 **November 8, 2006 at 10:00 a.m.**  
6 **DFS Central Laboratory, Classroom 1**  
7

8  
9 Board Members Present:

10  
11 Mr. Steven Benjamin  
12 Mr. Joseph Bono  
13 Ms. Linda Carne (Designee for Ms. Linda Fairstein)  
14 Mr. Leonard Cooke  
15 Ms. Rochelle Altholz (Designee for Dr. Marcella Fierro)  
16 Colonel Steven Flaherty  
17 Ms. Katya Herndon (Designee for Mr. Karl Hade)  
18 Sheriff F.W. Howard  
19 Mr. Alan Katz (Designee for Ms. Marla Decker)  
20 Ms. Demris Lee  
21 Ms. Elizabeth Russell  
22 Mr. Randolph Sengel, Chair

23  
24 Department Staff Members Present:

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26 Mr. Jeff Ban, DNA Section Chief  
27 Dr. Dave Barron, Central Laboratory Director  
28 Ms. Leslie Ellis, Director of Human Resources  
29 Dr. Paul Ferrara, Director  
30 Ms. Michele Gowdy, Department Counsel  
31 Ms. Meghan Kish, Board Secretary  
32 Mr. Ron Layne, Director of Administration and Finance  
33 Mr. Pete Marone, Director of Technical Services  
34 Ms. Elise Mirza, Policy Analyst  
35 Mr. James Pickelman, Firearms and Toolmarks Section Chief  
36 Ms. Susan Scholl, Eastern Laboratory Director  
37 Mr. Steve Sigel, Deputy Director  
38 Ms. Amy Wong, Northern Laboratory Director

39  
40 Call to Order

41  
42 The meeting was called to order by Mr. Sengel.

43  
44 Mr. Sengel introduced the following individuals: Ms. Rochelle Altholz, designee for Dr.  
45 Marcella Fierro; and Mr. Alan Katz, designee for Ms. Marla Decker.  
46

47 Adoption of Agenda

48

49 Mr. Sengel made an addition to the agenda. Under new business, Mr. Sengel asked that  
50 Marijuana Field Test Regulation be inserted as an additional topic. The agenda with that  
51 addition was adopted unanimously.

52

53 Adoption of Minutes

54

55 Mr. Sengel asked if there were any correction or additions to the draft minutes for the  
56 August 9, 2006 meeting. It was suggested that line 94 be amended to read "house the  
57 administration, breath alcohol, and training sections."

58

59 Colonel Flaherty moved that the minutes be amended, and adopted with the amendment.  
60 The motion was seconded, and all were in favor.

61

62 Chairman's Report

63

64 Mr. Sengel provided an update on the actions of the subcommittee who had been selected  
65 to review the applications for the Department Director position. He informed the Board  
66 that they had met on October 24, 2006 and reviewed all applications that had been  
67 received for the position. From those applications, the subcommittee selected 6  
68 individuals who will be interviewed on December 10-11, 2006.

69

70 Mr. Sengel introduced Michele Gowdy, the new Department Counsel. He welcomed her  
71 to the Department.

72

73 November 1 Report

74

75 Mr. Sengel explained to the Board that the November 1 Report, a copy of which had been  
76 distributed with the Board materials, had been submitted to the proper individuals,  
77 pursuant to VA Code §9.1-1110 (B). He explained that he had updated the case backlog,  
78 budget, and construction sections since this Board had approved the draft in August.

79

80 Vacancies at the Northern Laboratory

81

82 Mr. Sengel informed the Board that there were five vacancies in the Northern  
83 Laboratory's Forensic Biology section, and asked the Board to consider what further  
84 inquiries they might wish to make. During Mr. Sengel's private conversation with one of  
85 the outgoing examiners, questions about the Department's use of gel technology, rather  
86 than capillary electrophoresis (CE), the parallel technology, were raised. He questioned if  
87 the Department's use of gel technology (FMBio) was impacting its ability to recruit  
88 and/or retain examiners.

89

90 Mr. Marone responded that examiner retention in the Forensic Biology sections at the  
91 other regional laboratories was not a problem. He also informed the Board that the use of  
92 FMBio hadn't played a role in recruitment; the Department successfully recruited three

93 new DNA examiners within the last few months, all of whom had come from labs that  
94 employed CE.

95

96 Dr. Ferrara stated that Ms. Leslie Ellis, the Department's Human Resources Director, was  
97 present and prepared to report on this issue.

98

99 Mr. Ban explained to the Board that conversion time to CE was projected at 18 months to  
100 2 years. This includes equipping the laboratory and training the staff, while maintaining  
101 the lab's capacity. He also stated that a newer technology, micro-capillary array  
102 electrophoresis ( $\mu$ CAE) is currently being tested by the Department in conjunction with  
103 Dr. Richard Mathies of the University of California at Berkeley. He stated that this newer  
104 technology,  $\mu$ CAE, will be available in three years.

105

106 Mr. Bono then questioned the laboratory directors that were present whether this was a  
107 real issue, or merely anecdotal. Dr. Barron responded that he felt this was not an issue in  
108 the Central Lab. Ms. Scholl stated that her laboratory hadn't experienced much turnover.  
109 She reported that her examiners have expressed interest in other platforms, but are  
110 comfortable with the Department's use of technology. Ms. Wong stated that she felt the  
111 issue was real but was affected by localized factors.

112

113 Discussion followed on whether the Board wished to refer the issue to the Committee for  
114 consideration.

115

116 A general consensus was reached that, because the Committee is already considering the  
117 other technologies, it would be appropriate for the Board to ask the Committee to  
118 consider the Human Resources aspect along with the other considerations when  
119 discussing the possible implementation of new technology. Mr. Sengel asked that an  
120 assessment be presented at the February meeting of the Board.

121

#### 122 Conflict of Interest

123

124 Mr. Sengel informed the Board that some questions had arisen after a Committee  
125 member, Dr. Dan Krane, testified as an expert witness in Virginia criminal cases. General  
126 discussion followed.

127

128 It was the Board's consensus to informally request that Dr. Krane seek an opinion from  
129 the Attorney General's Office as to whether or not a conflict of interest existed.

130

#### 131 Director's Report

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133 Dr. Ferrara, in the interest of time, referred the Board to the November 1 report, and  
134 provided updates on the information provided.

135

136 Dr. Ferrara was pleased to report success with the Department's backlog initiative.  
137 During the month of October, the Drug backlog was reduced to 5,535 cases from 7,480  
138 cases, Latent Prints: 679 from 834, and Firearms: 1,631 from 1709. He reported that

139 DNA's had risen by 60 cases, bringing the current backlog to 1680, but estimated that the  
140 recent hire of several new examiners would assist in bringing that backlog back down.

141  
142 Sheriff Howard asked how the online ordering system was working for the marijuana  
143 field tests.

144  
145 Ms. Gowdy responded that it seemed to be working well. The agencies that have not yet  
146 ordered, roughly 100 of them, will be receiving a second notice through the mail.

147  
148 Sheriff Howard inquired as to the current wait for the Forensic Academy, if it was still a  
149 year and a half. Dr. Ferrara responded that the wait is now probably half of that, and that  
150 we have been able to accommodate all special requests. Sheriff Howard stated that he had  
151 gotten great feedback from the other agencies.

152  
153 Submission Protocol

154  
155 Mr. Sengel began by giving a brief history of the review of the submission protocol.  
156 After visiting all four laboratories, and meeting with the chemists and DNA examiners,  
157 new submission protocol was developed and published for public comment. After a  
158 comment period, a subcommittee reviewed the draft protocol, and redrafted the proposal.  
159 Once again, the protocol was sent out for public comment. Mr. Sengel asked that the  
160 Board now consider the draft of the protocol before them.

161  
162 Ms. Altholz suggested that #3 of the DNA submission protocol be amended. She asked  
163 that priority 1 (crimes against persons) be extended to include bodies that remain  
164 unidentified after all other avenues of identification have been exhausted, due to the fact  
165 that the body can not be released until after that identification has been made. Dr. Ferrara  
166 agreed that these cases, which are currently high priority, should remain so.

167  
168 Ms. Carne moved that the submission protocol, with the one amendment, be approved.  
169 The motion was seconded.

170  
171 Ms. Russell asked if there was any provision in the controlled substances protocol that  
172 included pharmaceutical submission. Mr. Sigel explained that those cases are handled by  
173 the investigating officer in coordination with the laboratory on a case by case basis.

174  
175 Mr. Benjamin stated that although he felt the DNA protocol was fine as written, he  
176 suggested that the statement of facts on a RFLE form could create potential  
177 complications. He stated that, if a submitting officer were to note on the form that the  
178 suspect had confessed to the crime, that statement could create an opening for the defense  
179 to argue that examiner bias could have played a role. Mr. Sengel suggested that, because  
180 so little information is written on the RFLE, this is not really an issue. He suggested that  
181 officer training could eradicate the problem.

182  
183 The motion went to vote, and passed unanimously.

184

185 Senate Bill 286

186

187 Mr. Sengel next directed the Board's attention to Senate Bill 286, which was discussed at  
188 the August 8, 2006 meeting. He asked that the Board amend or approve the language  
189 change suggested by the Committee.

190

191 Mr. Benjamin, as Counsel to the Courts of Justice Committee, elected to abstain.

192

193 There was discussion as to whether the general language "accredited by a recognized  
194 accrediting agency" would suffice, or if it would be more beneficial to name the  
195 accrediting agencies, of which there are two, the American Society of Crime Laboratory  
196 Directors/Laboratory Accreditation Board (ASCLD/LAB) and Forensic Quality Systems  
197 International (FQSI).

198

199 Mr. Benjamin added that any language changed or added would likely be questioned as  
200 to its purpose and importance, and that only changes that were necessary should be made.

201

202 Mr. Bono explained that, speaking as an individual, this accreditation is necessary. The  
203 accreditation process for laboratories requires a standard; their data must be valid, their  
204 methods must be valid, and their data must be reviewed to ensure the integrity of the  
205 examinations. He reported that both Texas and New York have implemented such  
206 requirements.

207

208 Dr. Ferrara explained that in Virginia, since 1989, Virginia Laboratories have maintained  
209 ASCLD/LAB accreditation. He added that Virginia followed the model of New York  
210 State by creating the Board and the Committee. In New York, advocates of the Board and  
211 Committee also advocated the oversight of private laboratories under similar legislation.  
212 To adopt such legislation in Virginia would be following the natural progression.

213

214 Colonel Flaherty moved that the bill be recommended to the Committee for Courts of  
215 Justice with the following language: "All DNA analyses offered as evidence shall have  
216 been performed by laboratories *accredited by the American Society of Crime Laboratory  
217 Directors/Laboratory Accreditation Board (ASCLD/LAB) or Forensic Quality Systems  
218 International (FQSI) to perform such analyses.*"

219

220 The motion was seconded, and approved unanimously. Mr. Benjamin and Ms. Herndon  
221 abstained from voting.

222

223 Grant Approvals

224

225 Mr. Sengel directed the Board's attention to the two grant summaries that had been sent  
226 out with the Board materials. He asked if there were any questions. There were none.

227

228 Joe Bono made a motion to approve the grant applications. The motion was seconded,  
229 and passed unanimously.

230

231 Marijuana Field Test Regulations

232

233 Mr. Sengel informed the Board that the Marijuana Field Test regulations, which had been  
234 submitted as emergency regulations in July, required Board approval before submission  
235 as proposed permanent regulations.

236

237 Ms. Herndon asked that one minor change be made: she asked that an apostrophe be  
238 inserted in the word “manufacturers” in the definitions section of the regulation.

239

240 Sheriff Howard moved that the regulations be approved with the amendment. Mr. Bono  
241 seconded the motion, and the motion passed unanimously.

242

243 Statement of Economic Interest/COIA

244

245 Ms. Kish informed the Board that, although the Conflict of Interest training they received  
246 at the November 2005 meeting is good for two years, Statement of Economic Interest and  
247 Financial Disclosure forms must be filed each year by January 15, 2007. Ms. Kish stated  
248 that she will email a link to the online forms to all members, and asked that the Board fill  
249 out the forms and return them to her attention by December 15, 2006.

250

251 Ms. Russell asked if they needed to fill the forms out if they have already filed such  
252 forms for another agency. Ms. Kish responded that additional forms would not be needed,  
253 but asked that she be sent a copy for the Board records.

254

255 Public Comment

256

257 Mr. Sengel asked if any members of the public had any comments.

258

259 Mr. Clyde Cristman, the Deputy Secretary of Public Safety, stood and introduced himself  
260 to the Board.

261

262 Adjourn

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264 The meeting adjourned at 11:35 am.